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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,669	01/11/2002	Alfonso Losada	SST-1305	8368
498	7590		EXAMINER	
JAMES R. CYPHER			SAUTHER, FLEMMING	
405 14TH STREET			ART UNIT	PAPER NUMBER
SUITE 1607			3677	
OAKLAND, CA 94612			MAIL DATE	DELIVERY MODE
			09/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/043,669

Applicant(s)

LOSADA, ALFONSO

Examiner

Flemming Saether

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/11/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-52 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 13, 17, 18, 24 and 26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-23 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 8-12, 14-16, 19, 25, 27-34, 39-41 and 44-48 is/are rejected.
- 7) ☒ Claim(s) 35-38, 42, 43 and 49-52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

Claims 6, 7, 13, 17, 18, 24 and 26 remain in the application as having been non-elected.

Claim Rejections - 35 USC § 112

Claim 39, 44 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 39 does not have a period and it is unclear if it is simply lacking a period or if there is something additional missing.

Claim Rejections - 35 USC § 103

Claims 1, 3-5, 8-12, 14-16, 19, 25, 27, 28, 31-34, 39, 40 and 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfaff (US 2,961,210) in view of Pestel (US 3,391,508). Pfaff discloses a fastener assembly (31) comprising a plate (81) having a bearing surface (the lower surface of the plate) with an extending portion located opposite an uninterrupted groove (89, 90) formed in the top surface which extend the length of the plate and are capable of providing a guide means and; a stud (15) is held within the plate capable of being received in a nail gun and having a pointed end extending below the bearing surface. The plate further includes an attachment leg (33) and raised portion (63) which is capable of collapsing (at 66 or 86) to contribute to the bearing surface. The raised portion begin shown cylindrical in the vertical direction. In regards to claim 31, 32, 44 and 45 where the raised portion is not required to collapse

and there is no required attachment leg. Pfaff does not disclose the grooves being substantially linear and straight along their entire length. However, Pfaff does teach the fastener may be used in other assemblies including lathing and furring strips (column 5, lines 20-24). Pestel discloses a furring strip including a fastening assembly wherein grooves (17) are disclosed as substantially straight and linear for their entire length. Pestel further discloses a raised attachment leg (14) parallel to the grooves. As the time the invention was made, it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the fastening assembly of Pfaff in a furring strip as disclosed in Pestel in light of the teaching in Pfaff.

Allowable Subject Matter

Claims 20-23 are allowable. The prior art does not disclose nor would it have been obvious to incorporate the claimed fastener assembly into unattached plate guided along a feeding track for use with a power actuated gun.

Claims 29, 30, 35-38, 42, 43 and 49-52 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Remarks

Applicant's remarks have been considered and are generally agreed with. However, while applicant is correct that Pfaff does not disclose the straight grooves

along the entire length Pfaff does disclose the invention can have other applications such as lathing and furring strips (column 5, second paragraph). Therefore, since lathing strips are known to have a rectangular shape, the grooves would inherently have to straight along the entire length but, that notwithstanding the reference to Pestel, which is a furring strip, has been applied since it additionally discloses the angularly attached leg as discussed in the above rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vic Batson can be reached at 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Flemming Saether
Primary Examiner
Art Unit 3677

/Flemming Saether/
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